STATE OF MICHIGAN

COURT OF APPEALS

JANET STUDAKER,

Plaintiff-Appellant,

v

TARGET CORPORATION,

Defendant-Appellee.

UNPUBLISHED
April 6, 2006

No. 266678
St Clair Circuit Court
LC No. 05-000625-NO

Before: Smolenski, P.J. and Owens and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this premises liability action. Because plaintiff has not supplied evidence that removes her claim from the realm of conjecture, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the court must consider not only the pleadings, but also any depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co,* 460 Mich 446, 455; 597 NW2d 28 (1999).

There is no dispute that plaintiff, as a customer in defendant's store, was an invitee. *Stitt v Holland Abundant Life Fellowship,* 462 Mich 591, 604; 614 NW2d 88 (2000). "A premises owner owes, in general, a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Kenny v Kaatz Funeral Home,* 264 Mich App 99, 105; 689 NW2d 737 (2004), rev'd on other grounds 472 Mich 929 (2005). "The care required extends to instrumentalities on the premises that the invitee uses at the invitation of the premises owner." *Eason v Coggins Mem Christian Methodist Episcopal Church,* 210 Mich App 261, 264; 532 NW2d 882 (1995). This duty extends to conditions known to the landowner and those which he should have discovered by the exercise of reasonable care. *Bertrand v Alan Ford, Inc,* 449 Mich 606, 609; 537 NW2d 185 (1995).

The plaintiff has the burden of producing evidence sufficient to make out a prima facie case. *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 712; 202 NW2d 727 (1972). The happening of an accident is not, in and of itself, evidence of negligence. The plaintiff must present some facts that either directly or circumstantially establish negligence. *Whitmore v Sears, Roebuck & Co,* 89 Mich App 3, 9; 279 NW2d 318 (1979). "Where the circumstances are such as to take the case out of the realm of conjecture and bring it within the field of legitimate inference from established facts, the plaintiff makes at least a prima facie case." *Clark v Kmart Corp,* 242 Mich App 137, 140-141; 617 NW2d 729 (2000), rev'd on other grounds 465 Mich 416 (2001). If the plaintiff fails to establish a causal link between the accident and any negligence on the part of the defendant, summary disposition is proper. *Pete v Iron Co,* 192 Mich App 687, 689; 481 NW2d 731 (1992).

In this case, as plaintiff was removing an item from a shelf, the shelf above it fell down and struck her. Plaintiff has not shown the existence of a defect in the shelves or shelving unit that made them prone to collapse. A theory of causation must be based on reasonable inferences from established facts, not on mere speculation. *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994). "[W]hile the evidence need not negate all other possible causes, this Court has consistently required that the evidence exclude other reasonable hypotheses with a fair amount of certainty." *Craig v Oakwood Hosp,* 471 Mich 67, 87-88; 684 NW2d 296 (2004). Plaintiff admitted that she was speculating that the shelf supports were not securely fastened and that it was possible that she jostled the upper shelf with the merchandise as she removed it from the shelf below. Because there is no evidence that the shelving was defective or improperly fastened together and it is as equally likely that plaintiff knocked the shelf from its brackets as it is that defendant was negligent in putting the shelving unit together, the evidence is insufficient to create an issue of fact. Therefore, the trial court did not err in granting defendant's motion.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio